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Sup. Ct. No. 99330-1

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BRANDON BACKSTROM,

Petitioner.

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SUPPLMENTAL BRIEF IN SUPPORT OF PETITION FOR REVIEW

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## **I. SUPPLEMENTAL FACTS**

On December 17, 2020, Mr. Backstrom filed this Petition for Review and raised two issues: 1. Is a sentence of 42 years for a juvenile defendant convicted in adult court an unconstitutional de facto life sentence? 2. Did the sentencing judge abuse her discretion when she failed to fully acknowledge the forward looking evidence of Brandon's capacity for change and instead gave great weight to the "horrific" nature of the murders?

On April 7, 2021, this Court stayed consideration of the Petition pending the decision in *State v. Haag*, - Wn.2d. -, 495 P.3d 241 (2021). *Haag* was decided on September 23, 2021 and this Court lifted the stay. Mr. Backstrom's Petition is now set for consideration on January 4, 2022.

## **II. SUPPLEMENTAL ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

### **1. IS A MINIMUM TERM OF 42 YEARS A DE FACTO UNCONSTITUTIONAL LIFE SENTENCE FOR BRANDON?**

In *State v. Bassett* 192 Wn.2d 67, 91, 428 P.3d 343 (2018), this Court held that a sentence of life without parole for a juvenile offender was unconstitutional under article I, section 14 of the Washington Constitution. The Court noted that this rule "applies not only to literal juvenile life without parole sentences but also to de facto juvenile life without parole sentences."

*Id.* at 81 (citing *State v. Ramos*, 187 Wn.2d 420, 437-39, 387 P.3d 650 (2017)).

In *Haag*, this Court did not provide a bright line rule for how long a sentence must be to be deemed a de facto life sentence. However, the Court held a 46-year sentence constituted a de facto life sentence for a juvenile offender because it leaves the incarcerated individual without a meaningful life outside of prison. Therefore, the sentence violated article I, section 14 and the Eighth Amendment.

Although Mr. Backstrom's sentence is 4 years shorter than Mr. Haag's, that small difference is inconsequential. *Haag* renders Backstrom's sentence unconstitutional.

**2. DID THE COURT OF APPEALS ERR WHEN IT CONCLUDED THAT THE TRIAL JUDGE DID NOT ABUSED HER DISCRETION IN SETTING THE MINIMUM TERM AT 42 YEARS?**

*Haag* also provides some guidance on this issue as well. In *Haag*, the Court pointed out that even when the resentencing court considered youth, it primarily focused on the youth of the victim . . . and not on Haag's youth at the time of the offense. 495 P.3d at 248. Here, rather than acknowledging that the case for retribution was a weak or peripheral concern, the sentencing court

elevated the “horrific” nature of the crime to a determining factor. This was an abuse of discretion.

### **III. CONCLUSION**

In light of *Haag*, Mr. Backstrom’s 42 year sentence is unconstitutional. This Court should grant review and summarily remand this matter to the trial court for resentencing

I certify this Supplemental Brief contains 564 words as counted by MS Word.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of November 2021.

/s/Suzanne Lee Elliott

Suzanne Lee Elliott, WSBA #12634  
Attorney for Brian Backstrom

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 99330-1
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BRANDON BACKSTROM,	)	
	)	
Petitioner.	)	

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